THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION No.15579 of 2002

Date: 21.09.2007

Between:

Ghouse Ali, S/o Hussain Yamani and 33 others.

.. Petitioners.

And

1. Special Court under A.P. Land Grabbing (Prohibition) Act, 1982 at Hyderabad.
2. The State of A.P., rep. by its Mandal Revenue Officer, Nampally, Hyderabad.

.. Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION No.15579 of 2002

ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

The petitioners herein, who have been declared as land grabbers, filed this Writ Petition seeking a Writ of Certiorari challenging the correctness and validity of the judgment passed by the first respondent herein dated 13.08.2002 in L.G.C.No.27 of 1999 and further, to direct the second respondent not to interfere with their possession and enjoyment in respect of the premises bearing

Nos.4-1-1/1 to 4-1-1/34, King Koti, Hyderabad.

In brief, the facts of the case are that at the instance of the second respondent herein, the State has filed the present application under Section 8 of the A.P. Land Grabbing (Prohibition) Act, 1982 (for brevity, 'the Act') to declare the petitioners as land grabbers and the structures raised by them as illegal and further to deliver possession of the same after evicting them and award compensation at Rs.2,000/- (Rupees two thousand only) per

annum for wrongful possession and enjoyment w.e.f. January 1986 and a like sum of Rs.2,000/- (Rupees two thousand only) towards profits per annum etc., in respect of the property which consists of an extent of 10,041 sq.mts. situated in T.S.No.2/Part, Ward No.196, Block-K, Thotaguda Village, Kind Koti, Hyderabad. As per the concise statement filed in support of the said petition, it was alleged that an extent of 58,924 sq.mts. was initially gifted by H.E.H. Nawab Mir Osman Ali Khan Bahadur in favour of Nawab Mir Barkath Ali Khan @ Prince Mukkaram Jah Bahadur viz., H.E.H. the Nizam-VII. The said property is known as King Koti Palace. However, since the entire property was attached by the Income Tax Authorities towards arrears of income tax, a sale was made by Nawab Mir Barkath Ali Khan on 18.01.1980 in favour of Government of A.P. covering an extent of 58,924 sq.mts., for a total consideration of Rs.22,00,000/- (Rupees twenty two lakh only) for adjustment of the said sale proceedings towards the tax. Subsequent to the sale, the property was handed over to the State, which has constructed King Koti Hospital therein. However, the petitioners herein, the respondents in the said application, are claiming to be the Khanazadars or persons claiming through them and who are in illegal occupation and possession without any right and title. Since the said property was grabbed by them and raised

several constructions, the same have been shown in green colour in the map attached to the sale deed. Hence, the application.

A detailed counter affidavit has been filed by the petitioners herein raising several facts, circumstances and also the chequered events. During the course of enquiry in the Court below, the only objection raised was that having regard to the undertaking given by the State itself in the Writ proceedings in W.P.No.788 of 1987 which was disposed of on 04.12.1989 with a direction not to proceed against the petitioners but to take recourse to the remedies available under the law, the present application as has been filed and framed on the ground of land grabbing is not maintainable since no proper remedy is taken. Hence, the application is liable to be rejected.

With these and several other allegations, the special Court formulated the following issues:

1. Whether the applicant is the owner of the application schedule property ?
2. Whether the rival title set up by the respondents is true, valid and binding ?
3. Whether the statement contained in the Memorandum No.2844/C1/89-1, dated 29.11.89 operates as estoppel against the petitioner in these proceedings ?
4. Whether the respondents are land grabbers within the meaning of Act XII of 1982 ?
5. In case of success, whether the applicant is entitled to compensation and profits as claimed ?
6. To what relief ?

When the parties went into trial, on behalf of the State, P.W.1-Mandal Revenue Officer and P.W.2-Mandal Surveyor were

examined and Exs.A.1 to A.4 were marked whereas on behalf of the petitioners herein, no evidence of either oral or documentary was adduced.

On a consideration of the evidence as produced on behalf of the respondent herein/applicant, the special Court held that in view of the sale and further the record produced by the respondent/applicant, the State is the owner of the schedule property and the rival title as set up by the petitioners herein has remained wholly un-sustained and unproved on issues 1 and 2 since no evidence has been adduced and on issue No.3, taking into consideration the writ proceedings in W.P.No.788 of 1987, it was held that since the undertaking was only to take alternative remedy which also includes the proceedings under Section 8 of the Act and the same relief can as well be granted by the special Court and therefore the proceedings are sustainable and ultimately, along with the said application, the petitioners are declared as land grabbers and directed for delivery of possession to the State. Hence, the Writ Petition.

Sri Vedula Venkataramana, learned counsel appearing on behalf of the petitioners mainly submitted that primarily, in view of the specific undertaking given by the State itself as long back as in the year 1989 by a memo dated 29.11.1989 in the said Writ

proceedings, no civil suit was filed and hence, it is not open for them to invoke Section 8 of the said Act nor there is any amount of land grabbing and the petitioners, therefore, cannot be called as land grabbers. That apart, it is also claimed that the petitioners are sustaining their possession on the basis of their own right, title and interest and thus, the special Court has not properly considered the effect of the proceedings ins the writ vis-à-vis the undertaking through a memo by the State and the consequences thereof.

The learned Government Pleader for Arbitration appearing on behalf of the respondents/applicants sought to sustain the findings of the Court below on the ground that having regard to the very document i.e., registered sale deed existing in their favour, and no document or evidence coming forth on behalf of the petitioners herein, the title has already stood established and the petitioners did not lead any evidence in rebuttal nor discharge the burden cast on them and therefore, the Court below was right in allowing the application. Further, the State has opted for right remedy and thus there are no merits in this Writ Petition.

On a consideration of the submissions made on both the sides and on perusal of the material available on record, it is seen that the only points that arise for consideration are as to whether on the facts and circumstances of the case, the proceedings as initiated by

the State against the petitioners herein under Section 8 of the Act is sustainable and whether the petitioners can be declared as land grabbers ?

As already stated above, the entire gamut of the case of the applicant/State rests on the basic fact that the State is the purchaser under a registered sale deed dated 18.01.1980 which is marked as Ex.A.2 from Nawab Mir Barkath Ali Khan for a valid consideration of Rs.22,00,000/- (Rupees twenty two lakh only) which has to be adjusted towards tax which was due from them and therefore, their ownership stands perfected by the said document especially in the absence of any valid rebuttal. No-doubt, in this case, the petitioners have not produced any evidence of either oral or documentary, but however, the main objection was as to their long possession which is admitted and also the fact that subsequently the State itself has initiated proceedings under the A.P. Public Premises (Eviction of unauthorized occupants) Act and which was challenged in a writ petition being W.P.No.788 of 1987 which was disposed of on 04.12.1989 by recording the memo filed on behalf of the State through its Advocate General. The said Memo is dated 29.11.1989, which reads as follows:

> "Kind attention of the Advocate Generla is invited to his letter cited. He is informed that the Government are willing to drop the proceedings under Andhra Pradesh Public Premises (Eviction of unauthorized occupants) Act and to file a suit in the City Civil Court, Hyderabad as suggested by him. The Hon'ble High Court may kindly be

informed accordingly.

2. The Commissioner, Andhra Pradesh Vaidya Vidhana Parishad will be pursuing further action in consultation with the Advocate General in this regard.

S.R. AVOLU,
SECRETARY TO GOVERNMENT."

From the above, it is evident that the State has decided to drop the proceedings which have been initiated under the A.P. Public Premises (Eviction of unauthorized occupants) Act and they will pursue further action. Necessarily, it only follows that the applicant i.e., State has to file a suit against the petitioners herein for eviction but not otherwise. All other questions which have been raised in the counter-affidavit have not been gone into by the special Court nor the petitioners have made any efforts to substantiate the same apparently reserving the same in the proceedings which may possibly be initiated. Be that as it may, the fact remains that having regard to the fact that the petitioners' possession dates back to quite long period even as on the date of the sale deed i.e., Ex.A.2 18.01.1980, the petitioners found to be in possession and they were sought to be evicted in the aforesaid provisions of the Act and ultimately the same was withdrawn with a liberty. Therefore, having regard to such long possession, the only remedy is to file a regular civil suit and it would not amount to any act of land grabbing as held by this Court in ***Govt. of A.P. v. T. Krishna Rao***[1] where it

has been pointed out that the summary remedy for eviction which is provided for under the provisions of the A.P. Land Encroachment Act or similar to that of A.P. Public Premises (Eviction of unauthorized occupants) Act cannot be taken recourse where serious questions of right, title etc., arise between the parties. In ***Mohd. Siddiq Ali Khan v. Shahsun Finance Limited, Chennai***[2]***,*** *a* Full Bench of this Court, while considering the provisions of A.P. Land Grabbing (Prohibition) Act 1982 , held that "

> "Unless the allegations are made in the application to satisfy and attract the ingredients of "land grabber" and "land grabbing" as provided for under Section 2(d) and (e) of the Act, mere repetition of words "land grabbing" would not be enough for taking cognizance of a case, unless that statement or allegations satisfies both the ingredients – the factum as well as the intention."

Similarly a Division Bench of this Court recently in ***Arif Noorul Hassan v. State of A.P.***[3] of which Justice B. Prakash Rao is one of the members, has held that:

> "Unless there is an averment specifically to show that the applicants are in possession in their own absolute right, title and interest and the respondents so called land grabbers without any such right, title and interest or valid claim, dispossessed the grabbed land from the applicants, the very application would not come or fall within the parameters as contemplated under the aforesaid Act."

In view of the aforesaid principles and as evident from the very record that in spite of the fact that the petitioners' possession dates

back for a quite longer period and they themselves have set up their own claim all along and further in view of the undertaking given in the Writ proceedings against which it is not open for the State to go back or resile from the position which they have taken especially no civil suit having been filed in pursuance thereof, it is not open for them to call the petitioners as land grabbers or invoke the provisions of Section 8 of the Act to claim any relief as against them. In these circumstances, the approach of the special Court mainly on the premise of existence of sale deed in their favour and any relief which civil Court grants can as well be granted by the special Court is totally erroneous and does not fit well with the scope or object or within the parameters as contemplated under the Act and necessarily it follows that it is not every relief of possession and dispossession which falls within the ambit of the said Act unless those ingredients are made out as already stated above.

The Writ Petition is accordingly allowed. The judgment dated 13.08.2002 in L.G.C.No.27 of 1999 on the file of the special Court under the A.P. Land Grabbing (Prohibition) Act at Hyderabad is set aside. No costs.

_____

B. PRAKASH RAO, J

_____

G.V. SEETHAPATHY, J

21st September 2007.

Chvn.

---

[1] AIR 1982 Supreme Court 1081

[2] 2005 (2) ALD 675 (FB)

[3] 2007 (5) ALT 69 (DB)